



## Senate

General Assembly

**File No. 318**

*January Session, 2013*

Substitute Senate Bill No. 1075

*Senate, April 3, 2013*

The Committee on Labor and Public Employees reported through SEN. OSTEN of the 19th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING NONWAGE PAYMENTS IN THE  
CONSTRUCTION INDUSTRY AND DAMAGE AWARDS IN WAGE  
CLAIM CASES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective October 1, 2013*) (a) For purposes of this  
2       section:

3       (1) "Administrator of the Unemployment Compensation Fund"  
4       means the Labor Commissioner;

5       (2) "Construction services" means any erection, excavation,  
6       installation, alteration, addition, modification, repair, improvement,  
7       demolition, destruction, dismantling or removal of all or any part of a  
8       building, structure, dock, wharf, surface or subsurface construction on  
9       or attached to any real property;

10       (3) "Commissioner" means the Commissioner of Revenue Services;

11       (4) "Construction services provider" means any person in the  
12 business of performing construction services that is paid by a payor for  
13 performing such services;

14       (5) "Payor" means any person in the business of performing  
15 construction services that makes payment to a construction services  
16 provider; and

17       (6) "Person" means an individual, individuals, firm, partnership,  
18 association, corporation, limited liability company, business trust, legal  
19 representative or organized group of persons.

20       (b) Any payor that makes payment, other than wages, but including  
21 payment made for materials and equipment, in excess of six hundred  
22 dollars in any calendar year to a construction services provider shall  
23 provide notice of such payment to the construction services provider  
24 and the Commissioner of Revenue Services on a form prescribed by  
25 the commissioner. Such form shall be submitted by the payor on or  
26 before January thirty-first of the year following the calendar year in  
27 which such payment was made and shall include: (1) The name and  
28 address of the payor; (2) the name, address and tax identification  
29 number of the construction services provider; (3) the amount of such  
30 payment and the cumulative amount of all payments made by the  
31 payor to the construction services provider in the calendar year; and  
32 (4) any other information that the commissioner may require.

33       (c) The commissioner shall transmit the notice submitted by the  
34 payor pursuant to subsection (b) of this section to the Administrator of  
35 the Unemployment Compensation Fund not later than the first day of  
36 the month following the calendar year in which the commissioner  
37 receives such notice. The commissioner may share any information  
38 contained in the notice with any other state or federal law enforcement  
39 agency.

40       (d) Any payor that fails to provide notice to the construction  
41 services provider and the commissioner as required pursuant to  
42 subsection (b) of this section shall be fined not more than two hundred

43 fifty dollars for each such failure.

44 Sec. 2. Section 31-72 of the general statutes is repealed and the  
45 following is substituted in lieu thereof (*Effective October 1, 2013*):

46 When any employer fails to pay an employee wages in accordance  
47 with the provisions of sections 31-71a to 31-71i, inclusive, or fails to  
48 compensate an employee in accordance with section 31-76k or where  
49 an employee or a labor organization representing an employee  
50 institutes an action to enforce an arbitration award which requires an  
51 employer to make an employee whole or to make payments to an  
52 employee welfare fund, unless the employer proves a good faith basis  
53 for believing that its underpayment of wages was in compliance with  
54 the law, such employee or labor organization [may] shall recover, in a  
55 civil action, twice the full amount of such wages, with costs and such  
56 reasonable attorney's fees as may be allowed by the court, and any  
57 agreement between him and his employer for payment of wages other  
58 than as specified in said sections shall be no defense to such action.  
59 The Labor Commissioner may collect the full amount of any such  
60 unpaid wages, payments due to an employee welfare fund or such  
61 arbitration award, as well as interest calculated in accordance with the  
62 provisions of section 31-265 from the date the wages or payment  
63 should have been received, had payment been made in a timely  
64 manner. In addition, the Labor Commissioner may bring any legal  
65 action necessary to recover twice the full amount of unpaid wages,  
66 payments due to an employee welfare fund or arbitration award, and  
67 the employer shall be required to pay the costs and such reasonable  
68 attorney's fees as may be allowed by the court. The commissioner shall  
69 distribute any wages, arbitration awards or payments due to an  
70 employee welfare fund collected pursuant to this section to the  
71 appropriate person.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2013</i>	New section
Sec. 2	<i>October 1, 2013</i>	31-72

**LAB**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

## **OFA Fiscal Note**

### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 14 \$</b>	<b>FY 15 \$</b>
Department of Revenue Services	GF - Cost	85,000-110,000	Minimal
Department of Revenue Services	GF - Revenue Gain	Potential Minimal	Potential Minimal

**Municipal Impact:** None

### **Explanation**

The bill establishes a reporting requirement to the Department of Revenue Services (DRS) for non-wage payments made by certain construction businesses, and a \$250 penalty for each incident of non-compliance. This results in a one-time cost of \$85,000-\$110,000 in FY 14, and minimal annual costs thereafter. This also results in a potential minimal revenue gain to the extent businesses do not comply with the requirement and are subsequently fined.

The one-time cost of \$85,000-\$110,000 to DRS consists of \$35,000 for programming changes to the internal Integrated Tax Administration System (ITAS) in order to accept and maintain the new data, and \$50,000-\$75,000<sup>1</sup> for changes to the Taxpayer Service Center (TSC) to allow for businesses to report, and to develop a system to impose a fine for non-compliance. Additionally, there would be minimal annual mailing costs for imposing the fine for non-compliance.

### **The Out Years**

The annualized ongoing fiscal impact identified above would

<sup>1</sup> The cost will vary depending on the actual volume of businesses reporting.

continue into the future subject to inflation.

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**OLR Bill Analysis****sSB 1075*****AN ACT CONCERNING NONWAGE PAYMENTS IN THE CONSTRUCTION INDUSTRY AND DAMAGE AWARDS IN WAGE CLAIM CASES.*****SUMMARY:**

This bill creates a notice requirement for a construction business (contractor) that pays another construction business (subcontractor) more than \$600 in a calendar year for anything other than wages, including payments for materials and equipment. It requires the contractor to provide the revenue services commissioner and subcontractor, on a form prescribed by the commissioner, with (1) the contractor's name and address; (2) the subcontractor's name, address, and tax identification number; (3) the amount of individual and cumulative payments from the contractor to the subcontractor in the calendar year; and (4) any other information the commissioner requires.

The bill requires the contractor to file the notice with the revenue services commissioner by January 31<sup>st</sup> of the year following the year it paid the subcontractor. The revenue services commissioner must give the notice to the labor commissioner by the next January 1<sup>st</sup>. The revenue services commissioner can share information in the notice with any other state or federal law enforcement agency.

Under the bill, contractors that fail to provide the notice can be fined up to \$250 per failure. It is unclear if the contractor must file a notice for each payment greater than \$600 or if it must file one annual notice for each subcontractor it cumulatively paid more than \$600 in the calendar year. It is also unclear who imposes the fine; presumably it is the revenue services commissioner.

The bill also requires, rather than allows, a court to award double damages, costs, and attorney's fees when it finds that an employer failed to pay an employee's wages, benefits, or arbitration award, unless the employer proves a good faith basis for believing that its underpayment complied with the law. It is unclear if the employee could recover anything in a civil suit in which the employer proved such a good faith basis for the underpayment. Existing law also allows the labor commissioner to collect the unpaid wages and payments or bring a civil suit on the employee's behalf.

EFFECTIVE DATE: October 1, 2013

### **CONTRACTORS AND SUBCONTRACTORS**

The bill applies to business entities that erect, excavate, install, alter, add, modify, repair, improve, demolish, destroy, dismantle, or remove all or any part of a building, structure, dock, wharf, surface, or subsurface construction on or attached to any real property. A business that performs these services (the contractor) must meet the bill's notice requirements if it pays another business (the subcontractor) more than \$600 in a calendar year to perform these services.

### **COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 7 Nay 3 (03/19/2013)